

Public Law 100-216
100th Congress

An Act

Dec. 29, 1987
[H.R. 519]

To direct the Federal Energy Regulatory Commission to issue an order with respect to Docket No. EL-85-38-000.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FERC ORDER.

Idaho.
Contracts.

(a) **ISSUANCE OF ORDER.**—Notwithstanding the petition filed by the Idaho Power Company on November 26, 1984, with the Federal Energy Regulatory Commission for a declaratory order concerning an Agreement dated October 25, 1984 (Exhibit A, Petition of Idaho Power Company for Declaratory Order, FERC Docket No. EL-85-38-000), relative to the projects of such company specifically referenced in the petition, the Federal Energy Regulatory Commission is authorized and directed, in lieu of the petition request, to issue an order under the Federal Power Act providing that such Agreement shall not be considered by the Commission, in any subsequent proceeding before the Commission during the remaining term of the licenses applicable to such projects, to be either—

(1) inconsistent with the terms and conditions of such licenses concerning the retention of project property; or

(2) imprudent for purposes of section 205 of the Federal Power Act.

The order, subject to the requirements of section 3(a)(2), shall be issued within 90 calendar days after enactment of this Act and shall take effect on the date provided in section 3.

(b) **CONSIDERATION OF OTHER MATTERS.**—Notwithstanding the issuance of an order pursuant to this section, except for the specific terms and conditions referred to in subsection (a)(1) and the specific provisions of the Federal Power Act referred to in subsection (a)(2), the Commission may, at any time, consider, in accordance with existing and applicable law, whether the settlement agreement and the licensee are in full compliance with—

Fish and fishing.
Wildlife.

(1) any terms and conditions of the license (including those relating to the protection, mitigation, and enhancement of fish and wildlife), and

Environment.

(2) any other applicable provision of Federal environmental law (including section 10 of the Federal Power Act).

(c) **OFFERS OF SETTLEMENT.**—In issuing an order pursuant to this section, the Commission shall accept and adopt as part of the order the Offers of Settlement pending before the Commission on enactment of this Act between the licensee, the State of Idaho, the Secretary of the Interior, the National Marine Fisheries Service and others.

SEC. 2. SAVINGS PROVISION.

Idaho.

(a) **FISH AND WILDLIFE AGREEMENTS AND STIPULATIONS.**—Nothing in section 1 or in any order issued by the Commission pursuant to section 1 shall be construed as affecting any stipulation or other

agreement entered into by the State of Idaho or the Idaho Power Company prior to the date of enactment of this Act relating to any fish and wildlife matters affected by any such project.

(b) FERC AUTHORITY.—Nothing in section 1 shall be construed to modify, change, expand, or limit the authority of the Federal Energy Regulatory Commission under the Federal Power Act or other applicable law relating to fish and wildlife.

(c) WATER.—Nothing in this Act shall be construed as (1) affecting the rights or jurisdiction of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any ground water resource; (2) altering or establishing the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water-related right; or (3) altering, amending, repealing, interpreting, modifying, or be in conflict with, the Treaty rights or other rights of any Indian tribe.

State and local
governments.
Indians.

SEC. 3. STUDY.

(a) JOINT AGREEMENT TO CONDUCT STUDY.—

(1) The Federal and licensee parties to the Offers of Settlement and the settlement agreement referred to in section 1 shall immediately after enactment of this Act enter into good faith negotiations for a joint agreement to conduct and adequately finance detailed evaluations and studies (and issue a report thereon) concerning the timing, quantity and quality of instream flows and related matters to protect, enhance, and mitigate fish and wildlife resources, including anadromous fish and related habitat of the Snake River and the Deer Flat National Wildlife Refuge. Such agreement shall be filed with the Federal Energy Regulatory Commission and shall be considered thereafter as part of the order issued pursuant to section 1. Such negotiations shall be completed and a joint agreement entered into by all such parties and filed with the Commission not later than 60 calendar days after the order is issued under section 1.

Reports.
Fish and fishing.
Wildlife.

(2) If a joint agreement is not entered and filed within the 60-day period referred to in paragraph (1), the Commission shall within 60 calendar days after the expiration of such period issue an order under this paragraph requiring that the evaluations and studies referred to in paragraph (1) be undertaken and the duties and responsibilities of such parties to conduct and finance them. The Commission may for good cause extend the time for issuance of the order under this paragraph an additional period of not more than 45 calendar days. The Commission in issuing an order under this subsection, may take into consideration such information as the parties may stipulate and file with the Commission resulting from such negotiations. The Commission is not required, notwithstanding any provision of law, to afford the parties any other opportunity to make oral or written presentations to the Commission regarding such order. In any judicial review of the order issued under section 1, the order (or the adequacy thereof) issued under this paragraph shall not be a basis for that review or for a stay of the effective date of the order issued under section 1.

(3) The order referred to in section 1 shall be effective and final when the joint agreement referred to in paragraph (1) is filed by all the parties with the Commission, or not later than 60 calendar days after such order is issued under section 1,

whichever comes first. The order referred to in paragraph (2) shall be effective and final when issued. When effective, each order issued and joint agreement adopted shall be enforced by the Commission under the Federal Power Act and the licensee shall pay its assigned share at the times and in the manner directed by the Commission.

(4) The evaluations and studies and the report thereof required by this subsection shall be made available by the Federal parties to the public and the Commission and shall be considered by the Commission in accordance with existing and applicable law. Nothing contained in this Act requires the Commission to take any action pursuant to such consideration, or authorizes or grants the Commission any authority to take any action, based upon the findings, recommendations, results, or conclusions of the study required by this section.

(5) Any final order issued pursuant to this Act shall be subject to judicial review in the same manner as final orders under the Federal Power Act are subject to judicial review under that Act.

(b) **PARTICIPATION BY GOVERNOR.**—At any time prior to the effective date of the order issued under section 1(a) of this Act, the Governor of the State of Idaho shall have the option to participate in good faith in the negotiations required by section 3 of this Act. In exercising such option, the Governor shall agree to carry out the State's responsibilities under the agreement or any order issued by the Commission under subsection (a).

(c) **FUNDING FOR FEDERAL SHARE OF STUDIES.**—The Secretary of the Interior and the National Oceanic and Atmospheric Administration shall, subject to applicable appropriation Acts, utilize such funds as may be available for carrying out the evaluations and studies required by this Act to be conducted by the parties referred to in subsection (a) and such agencies are authorized and directed to seek further appropriations as may be necessary. All such funds shall be available until expended. The Federal share of the costs of carrying out the evaluations and studies shall be determined pursuant to the joint agreement under subsection (a) (or the Commission order under subsection (a)(2), if applicable). The Federal agencies shall provide for consultation with the affected Indian tribes and other interested public or private persons during the conduct of any study conducted pursuant to this Act.

SEC. 4. PROVIDING INFORMATION TO CONGRESS.

The Federal Energy Regulatory Commission, the Secretary of the Interior, and the Administrator of the National Oceanic and Atmospheric Administration shall keep the Committee on Energy and

Reports.
Public
information.

State and local
governments.
Idaho.

Appropriation
authorization.

Indians.

Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate fully and currently informed of the status of all actions taken or required by this Act and of any delays (and the reasons therefor) in implementing all such actions.

Approved December 29, 1987.

LEGISLATIVE HISTORY—H.R. 519 (S. 214):

HOUSE REPORTS: No. 100-418 (Comm. on Energy and Commerce).

SENATE REPORTS: No. 100-8 accompanying S. 214 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 133 (1987):

Feb. 19, S. 214 considered and passed Senate.

Nov. 9, H.R. 519 considered and passed House.

Dec. 18, considered and passed Senate, amended. House concurred in Senate amendment.